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New York

President: Mr. Udovenko ..... (Ukraine)

The meeting was called to order at 10.05 a.m.

Agenda item 13

Report of the International Court of Justice (A/52/4)

The President: This morning the Assembly will first turn to the report of the International Court of Justice covering the period from 1 August 1996 to 31 July 1997.

May I take it that the General Assembly takes note of the report of the International Court of Justice?

It was so decided.

The President: I call on Mr. Stephen Schwebel, President of the International Court of Justice.

Mr. Schwebel (President of the International Court of Justice): It is an honour for me to address the General Assembly on the occasion of its consideration of the annual report of the International Court of Justice for the period August 1996 to August 1997. Speaking to the General Assembly on the Court's report is a tradition which was initiated by Sir Robert Jennings during his presidency of the Court, and it is one that I am happy to maintain, as did my immediate predecessor as President, Judge Bedjaoui.

It is a particular pleasure to speak to a General Assembly that meets under the presidency of Foreign Minister Udovenko. He is a leader of a State which recently has taken an important step in support of the Court's jurisdiction.

This is the year in which the Organization welcomed Mr. Kofi Annan as its new Secretary-General. Among the highlights of the year for the Court was the visit to The Hague by the Secretary-General in March, shortly after he took office. Members of the Court took great pleasure in Mr. Annan's visit and in having the opportunity to discuss with him, in depth, matters of current concern to the Court and to the United Nations. It was in a very real sense a working visit. The Court appreciated the profound interest in its work which that visit represented and the impetus it gave to it.

The Secretary-General, in visiting The Hague, visited what is increasingly seen as the judicial capital of the world. The Court is appreciative of the facilities of The Hague and the courtesies of the host Government. It is appreciative of the support of the host Government and the United Nations in extending the Peace Palace to accommodate the many Judges ad hoc and the staff of the Registry, extensions which have been notably successful. It looks forward to the celebrations of the centenary of the Hague Peace Conference of 1899 and it follows with high interest the negotiations in respect of the establishment of an international criminal court.

In the period under review, the Court gave a Judgment on 12 December 1996 upholding its jurisdiction in the case concerning *Oil Platforms* brought by the Islamic Republic of Iran against the United States of America. It then turned its attention to the case concerning the *Gabčíkovo-Nagymaros Project*, brought by Special Agreement between Hungary and Slovakia. It

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concerned a project for the joint construction of dams on the Danube River — and very much more. Quite apart from the exceptional amount of public interest this case aroused in those countries, and the variety of difficult and challenging issues it raised — fundamental issues of the law of treaties, environmental law, the law of international watercourses and of State succession and State responsibility — the case presented a number of distinctive features which called upon the Court's resourcefulness.

The volume of pleadings and documentary annexes filed exceeded 5,000 pages. There have been other cases of like or larger dimension of pleadings — such as *South West Africa*, *Barcelona Traction*, some *Continental Shelf* cases, and *Military and Paramilitary Activities in and against Nicaragua* — but the majority of cases produce pleadings less massive. The *Gabčíkovo-Nagymaros* pleadings and annexes placed a considerable burden on the Court's tiny translation services and on its budget.

The case also gave the Court the unique opportunity, between two rounds of oral hearings, at the joint invitation of the Parties,

> "to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates". [A/52/4, para. 108]

This procedure is poetically known in French as a *descente sur les lieux*; in English, we have come to call it a "site visit". The Parties agreed on the detailed itinerary, content and logistical arrangements of the visit, and the full Court spent four days visiting locations along the Danube between Bratislava and Budapest, accompanied by representatives of the two States and their scientific advisers. The Court looked, listened, asked many questions and gained a new dimension of insight into the case and what it meant to the Parties — much more than could have been gleaned from confining the proceedings to The Hague. I might add that it was all organized by the Parties with admirable efficiency.

I use the word "unique" because it was the first time in the history of the present Court that such a working visit to a site of the dispute had been undertaken. The visit was not entirely unprecedented. Almost 60 years ago, in May 1937, the Permanent Court of International Justice spent two days visiting a number of locations rather closer to the seat of the Court, along the River Meuse between Maastricht and Antwerp, in connection with a dispute between the Netherlands and Belgium in the case concerning the *Diversion of Water from the Meuse*. The published record of that visit is terse, but even so, the parallels between the two exercises — as between the cases themselves and the character of the visits — turned out to be striking.

There have been other occasions when such visits were requested by one party or canvassed, but for various reasons were not carried out by the Court. Clearly, the issues of law can usually be decided without such an exercise. In the exceptional case in which a site visit would be useful, it would depend upon a high degree of cooperation between the States concerned, and one can imagine only some contentious cases in which the situation on the ground may lend itself to carrying out a site visit. There are also financial implications for the States concerned. However, the successful completion of this valuable procedure in the *Gabčíkovo* case is suggestive.

The Court gave its Judgment in the *Gabčíkovo* case on 24 September. The importance of that Judgment not only for Hungary and Slovakia, but for the interpretation, application and development of international law, is considerable. It is a Judgment of significance for the law of treaties, of State responsibility, of international watercourses, of the environment and of State succession.

The *Gabčíkovo* Judgment is notable, moreover, because of the breadth and depth of the importance given in it to the work product of the International Law Commission. The Court's Judgment not only draws on treaties concluded pursuant to the Commission's proceedings — those on the law of treaties, of State succession in respect of treaties, and the law of international watercourses; it also gives great weight to some of the Commission's draft articles on State responsibility, as did both Hungary and Slovakia in their pleadings. This is not wholly exceptional; rather it illustrates the fact that, just as the judgments and opinions of the Court have influenced the work of the International Law Commission, so the work of the Commission may influence that of the Court.

The *Gabčíkovo-Nagymaros* Judgment is noteworthy too because it is the first of the Court to be placed on the Court's own Internet website, and that on the day of delivery of the Judgment. There was great use made of this innovation and we are confident that there will be of our website generally.

A last reason why the *Gabčíkovo-Nagymaros* case is of particular interest is that it is, in a sense, ongoing,

even after that Judgment. This is because of the nature of the parties' agreement as to what the role of the Court was to be. Essentially, in their Special Agreement, they handed over to the Court for resolution the legal aspects of a dispute which had deeply divided them at the political level, and which had proved intractable. The questions put by the parties, precisely framed, were clearly and conclusively answered by the Court in accordance with international law. But that is not where it ends; the Special Agreement goes on to provide that the parties shall

> "Immediately after the transmission of the Judgment ... enter into negotiations on the modalities for its execution."

It further provides that

> "If they are unable to reach agreement within six months, either party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment."

So, in a very real sense, the function of the Court in this case has been to provide the parties with the legal answers within which they may pursue their further negotiations: in other words, to advance the progress of their mutual search for a solution by assuming responsibility for defining the fundamental legal parameters of that process. It is for them to apply the Court's Judgment in taking their negotiations to a new level. In so doing, they will be directed not only by the Court's Judgment about the law of the matter, about the legal rights and wrongs of the past. They will also be guided by the Court's views as to the practical content of future cooperative arrangements.

This recalls to mind the concept evoked by Sir Robert Jennings when he addressed the Assembly in October 1993, charting the tendency, already apparent then, for the Court to be seen not solely as a sort of judicial "last resort", though it is that, but also as "a partner in preventive diplomacy", a vital part of the machinery deployed by States in the course of dispute resolution, machinery by which judicial findings of fact and rulings of law may define the bounds of constructive negotiations. The Court is gratified by the continuing development of this role, as part of the fabric of diplomatic negotiation with which the members of the community of nations interact to further the principles of the Charter and of international law.

This is why it is important to take account, in any assessment of the Court's work, not only of the cases which have been the subject of Judgments of the Court, and not only of disputes which are settled because of the prospect of resort to the Court, but also of those cases which, at a certain stage of the proceedings, have become ripe for and resulted in negotiated settlements.

There have been some telling examples in the past few years. Sir Robert mentioned two. One was the case on *Certain Phosphate Lands* between Nauru and Australia, which was settled after a Judgment on jurisdiction and admissibility favourable to Nauru. The other was the *Great Belt* case between Finland and Denmark, which was, after issuance of an order on a request for the indication of provisional measures, settled very shortly before the expedited hearings on the merits were to start, by negotiations which the Court had encouraged. The maritime delimitation case between Guinea-Bissau and Senegal also was discontinued by agreement, in the wake of a Judgment of the Court in a related case between those States. And, in another settlement, like that of the *Great Belt* made virtually on the courthouse steps, hearings due to take place in the *Aerial Incident* case between the Islamic Republic of Iran and the United States of America were postponed *sine die* at the request of the parties in 1994. Subsequently the case was settled.

These breakthroughs in negotiation are to be welcomed. They do, however, pose certain problems for the Court in terms of deployment of its scarce resources, and I will return to this point in a moment.

My distinguished predecessor as President, Judge Bedjaoui, took up the theme of the Court's advisory function, its underutilization and its potential for expansion to a wider spectrum of organs and agencies. Since then, as the Assembly is aware, the Court has given two important Advisory Opinions, in July 1996, one at the request of the World Health Organization on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, and the other at the request of the General Assembly itself, on the *Legality of the Threat or Use of Nuclear Weapons*. The Court has noted the response of the General Assembly, in resolution 51/45 M, to the Court's opinion and its decision to include in the provisional agenda of its fifty-second session an item entitled "Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*".

The limitations on the role of the Court can be structural, jurisdictional or circumstantial. Of the latter, the most obvious and immediate are resource constraints, notably, shortage of staff and money. The Court, a principal organ of the United Nations and, at the same time, in terms of staff and budget a very small fraction of it, has suffered severely over the current budgetary biennium from budgetary and staff cuts. However, the Secretary-General and his colleagues, and the Assembly itself, have been responsive in helping the Court to deal with its difficulties, with the fortuitous assistance of a rise in the value of the dollar. Their commitment to, and understanding of, the proper functioning of the Court as its Statute requires, is a matter of profound appreciation by the Court.

The Court continues to confront a heavy caseload under severe financial constraints. Resources are scarce and must be wisely deployed. Even though we have made some changes in the way in which we handle translation, our resources in this field are barely sufficient for the needs of immediately pending cases. There is no room for forward planning in the sense of embarking on the translation of cases which are not close to being ready for hearing, as there is simply no way of funding it. Moreover, there is uncertainty about whether it will be a wasted effort in the event of a settlement of the case before hearing.

This is why the consequences of an unpredicted settlement on the courthouse steps, however desirable it may be for the parties and for the broader interests of dispute resolution, can be disruptive of the Court's carefully resourced schedule of work. It is hard, in the present financial climate, to have a fallback position, especially at the merits phase of a case — that is, to have another case which is fully translated and ready for hearing, and which can be brought forward at short notice. While in an ideal world this would be desirable, in any event there is always an amplitude of pleadings requiring study by the members of the Court. The Court is at work even when it is not publicly sitting.

A fundamental consideration is the undoubted strength of the Court sitting in The Hague in its full composition. First, it can truly claim to be universal: its Members together represent the main forms of civilization and the principal legal systems of the world. Secondly, in combining both oral and written phases of procedure, it marries the key features of the common and civil law systems. The bench brings to bear the distinctive analytical techniques of both. At the same time, the Court's attitude towards evidence is demonstrably flexible. And lastly — and this is important — its decision-making process, carefully elaborated in the 1976 Resolution on the Internal Judicial Practice of the Court, is structured so as to permit each and every member of the Court to participate on an equal footing while maintaining the forward momentum of the drafting work.

On examining this resolution, one is struck by the careful balance of considerations of equality and discipline, and also by the importance of having an agreed structure and sequence to serve as the framework for the Court's deliberations. It is a coherent and coordinated process, with the emphasis squarely on the collective nature of the exercise. Consistently with this philosophy, Judges who might append separate or dissenting opinions still participate fully in the discussions and influence the contents of the Court's work, so that the judgment is in every sense the judgment of the whole Court. Those opinions are produced in the same time-frame as the judgment and are included with the text on the date it is rendered, rather than weeks or months later. If only because of the time it saves, which might otherwise be spent in discussing how to proceed — which can happen in arbitration, at a cost to the parties — the Court's established practice is a boon, and there is more to commend in it than that.

At the same time, any busy court must periodically review its procedures to ensure that they meet the needs of the day. In the last dozen years the Court has become much busier while, in the last few years, operating under sharp financial restrictions.

Because of their very nature, the proceedings of the Court cannot be swift — apart from provisional measures or the occasional urgent advisory opinion. The Court's procedures are designed to allow the institution judiciously to fulfil its unique and vital function in the service of international law, and to protect and uphold certain fundamental judicial principles. That function and those principles remain vital.

It is desirable that cases should be dealt with as expeditiously as possible, consistent with justice and with the highest levels of professional care. States themselves often require substantial periods of time for the preparation of their written pleadings. At the same time, with the increase in the Court's caseload in recent years, the time that elapses between the date when a case or a phase of a case is ready for a hearing, and when a case actually is heard, is too long, because the Court is still

dealing with prior cases. The Court has been studying how best this problem may be addressed.

It charged its Rules Committee with developing proposals to maximize the Court's efficiency. The Court has recently adopted a range of alterations to its working practices. Some of these will involve the parties, and some only the Court. The Court will inform parties to litigation of the new procedures that it proposes that may affect them. For instance, a new case cannot, of course, be heard until its pleadings are ready in both French and English. Because the translation of voluminous annexes of documents is expensive and time-consuming, it is to be hoped that the parties to cases before the Court will exercise every care to ensure that there are annexed to pleadings only those documents, or sections of documents, that are really required.

As for the measures that relate to the Court itself, it has been the longstanding practice for each Judge, upon the conclusion of the oral proceedings of a case, to prepare a written note, of whatever length he or she thinks appropriate, analysing the key issues of law in the case. These notes are translated and circulated for study before the Judges meet to deliberate on a case. The Court has now determined that it may proceed without written notes where it considers it necessary, in suitable cases concerning the jurisdiction of the Court or the admissibility of the application. This has already been the practice in the case of urgent requests for interim measures of protection. This departure will be on an experimental basis. The traditional practice regarding the preparation of written notes will be continued with regard to cases in which the Court is to decide on the merits.

The Court has made further important decisions directed to accelerating its work. In particular, appropriate cases on jurisdiction may be heard "back to back" — that is to say, in immediate succession — so that work may then proceed on them both concurrently. This innovation will be undertaken on an experimental basis, where there are appropriate cases and a pressing need to proceed rapidly.

The Court has also confirmed its recent practice in trying to give the parties notice of its intended schedule for the next three cases, believing that such forward planning assists both States and their counsel, and the Court.

In order to respond as best it may to the legitimate aspirations of States to have their cases heard as soon as possible, the Court has decided upon these measures and also upon a series of related and consequential changes in administrative and internal practices.

If States and the Court together cooperate along the lines I have indicated, we believe cases — including those on the current docket — can be ready for oral argument within an acceptable time after the conclusion of the written phase. States can come to the Court secure in the knowledge that their important legal disputes will be judicially resolved within a reasonable time.

Support for the Court from member States in its endeavour to continue to fulfil its statutory obligations in an optimal manner is, of course, most welcome. I note in this connection the proposals made by Mexico to the session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, held in January and February of this year. Mexico proposed that the International Court of Justice should be part of the ongoing process of reform and revitalization. Indeed it should.

However, I would urge Member States to bear in mind that such initiatives must be developed within the framework of the Court's Statute, which is an integral part of the Charter. The Statute can be amended, but no more easily than the Charter itself, and any amendments would require the most careful consideration. The Court itself, in the last article of its Statute, is given "power to propose such amendments to the present Statute as it may deem necessary". Article 30 of the Statute gives the Court the sole power to frame rules for carrying out its functions, and in particular its rules of procedure. The Court has, and must continue to enjoy, complete autonomy in establishing its own practices and procedures if its judicial independence is to be preserved. Equally, if it is to operate as the Charter provides, the Court must be accorded the resources to do its work. These are the essential conditions for the Court to further "the principles of justice and international law" to which the purposes of the United Nations Charter refer.

Mr. Tello (Mexico) (*interpretation from Spanish*): We are grateful to Judge Stephen M. Schwebel, President of the International Court of Justice, for the report he has submitted to the General Assembly. We appreciate this opportunity to strengthen the links of communication and cooperation between two principal organs of the United Nations. We are pleased to note that this year's report of the Court was published earlier than usual. We hope that this, which gives States timely information about the

work of the Court, will continue in the future and will mark the beginning of a more effective dialogue.

The pace of Court activities has increased considerably in recent years. We are pleased to note that States turn more frequently to judicial means for the settlement of their disputes. Yet in a situation where disputes on points of law are a fact of life, recourse to Court adjudication should be greater still.

At present, only 60 States — less than one third of the membership of the United Nations — recognize as compulsory the jurisdiction of the International Court of Justice. This is a very low figure in an Organization of 185 Members. During the reporting period, only one State, Paraguay, deposited a declaration recognizing as compulsory the Court's jurisdiction as contemplated by Article 36 of the Statute of the Court. We welcome the decision taken by Paraguay and urge States that have not yet done so to do the same.

We are convinced that recognition of the Court's jurisdiction as compulsory by all the permanent members of the Security Council would prove to be a crucial and decisive element in promoting greater use of judicial means for the settlement of disputes. At present, only the United Kingdom recognizes this jurisdiction.

The broad dissemination of the publications and decisions of the Court improves the study of international law and facilitates the understanding of that subject. That is why we particularly welcome the Court's decision to set up an Internet site to expand the availability of its documents. We are confident that this decision will not affect the availability or the quantity of printed Court documents, which are still necessary in places with limited access to electronic media.

There is a reference in paragraph 153 of the report to the Court's present budgetary restrictions. In his statement to the General Assembly at its fifty-first session, the President of the Court spoke of that issue and of other factors that limit the capacity of the highest judicial organ to contribute to the peaceful settlement of disputes and to the purpose of the maintenance of peace. The current President has just made reference to the same problem. The delegation of Mexico is aware of these concerns and is convinced that the Court must have all the practical means it needs to strengthen its role; in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, my delegation has encouraged a discussion of the impact that the increased number of cases before the Court has on the Court's functioning.

Ms. Eshmambetova (Kyrgyzstan), Vice-President, took the Chair.

The objective of this exchange is to help the Court to deal with a growing caseload. We reiterate today that this exercise is not aimed at involving Member States in areas that are internal to the functioning to the Court, as this is the sole purview of the institution itself; nor is it aimed at leading to reforms in its Statute. The independence and authority of the Court must be preserved at all times. We hope that the Court, as well as States, will participate in this exercise, which we are confident can lead to a strengthened institution.

We underscore once again the importance of the advisory opinion handed down by the Court on 8 July 1996 regarding the *Legality of the Threat or Use of Nuclear Weapons*. In its opinion, the Court determined that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of international humanitarian law. Likewise, and unanimously, it affirmed that there exists an obligation on the part of all States to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament under strict and effective international control. We note with concern that, in spite of this opinion, there is no sign yet of an unequivocal commitment on the part of all States to implement effectively this judgment by the Court.

In the already long history of humankind, the existence of this type of weapon constitutes an aberration which has lasted just a few decades. That is why we are convinced that it must disappear, and why Mexico will remain committed and work to make nuclear disarmament a reality in the near future.

Mr. Amorim (Brazil): I would like to start by thanking the President of the International Court of Justice (ICJ), Judge Schwebel, for his introduction of this year's report to the General Assembly. We welcome the opportunity afforded by the annual presentation of the ICJ's report to the General Assembly as a valuable occasion for an exchange on the work of the principal judicial organ of the United Nations.

During the Court's fiftieth anniversary in 1996, there were frequent references to a renewal of interest in

its activities. Judge Schwebel spoke of a burgeoning of the Court, with an increasing number of cases in its docket since the last decade. More recently, Judge Gilbert Guillaume has referred to "a resurrection of international justice". Many have pointed out that justice can contribute to the maintenance of international peace, and that peace favours recourse to justice. There seems to be a growing perception that the end of the cold war is conducive to the pacific settlement of disputes and that the International Court of Justice can play an important role, together with the General Assembly and the Security Council, in founding peace through justice, in conformity with the United Nations Charter.

The latest report from the ICJ indicates that at present there are nine cases before the Court. These cases involve disputes of varying nature, some of which have been associated with the use or threat of use of force, while others are of a more benign nature. In at least one case, the Court has been instrumental in helping to prevent hostility between two bordering nations in Africa from degenerating into an armed conflict. In other instances, it may be acting as a channel for preventive diplomacy, by defusing tensions which might otherwise have given way to unbridled antagonism.

The Judgment on the dispute concerning the projected diversion of the Danube for the construction of a dam on the Hungarian/Slovak border, made public after the issuance of the latest report, should hopefully contribute to promoting confidence and cooperation in a part of the world that is only now beginning to overcome a difficult period of transition.

In addition to its role in solving the contentious cases before it, the Court retains its unique capacity to issue advisory opinions on any legal question in response to requests by the General Assembly and the Security Council. The impact of the Advisory Opinion delivered on the *Legality of the Threat or Use of Nuclear Weapons* can still be felt in the deliberations of the General Assembly, and there are many who feel that greater use should be made of the Court's expertise under Article 96.

Authoritative voices have suggested that the capacity of United Nations organs and its specialized agencies to request advisory opinions might be extended to include other intergovernmental international organizations. Many consider that the United Nations Secretary-General should be authorized to request advisory opinions on legal questions arising within the scope of his responsibilities.

As further evidence of the Court's enduring relevance, the number of treaties which provide for submission to it of disputes arising thereunder continues to grow, and at last count stood at 264, more than 100 of those being multilateral treaties.

Furthermore, in his critical appraisal of the ICJ's first 50 years, the President of the Court has suggested that affording other international courts the facility of appeal to the International Court of Justice merits consideration, as specialized international courts multiply and the need arises to ensure that various international courts do not develop conflicting interpretations of international law. The intensification of the negotiating process for the establishment of an international criminal court should be borne in mind in this context.

At the same time, the question of calling upon the Court to examine the jurisdictional boundaries between the different organs of the United Nations system and granting it powers of judicial review over administrative action or political decisions is one that is likely to re-emerge some time in the future, given the appropriate political climate.

In short, in all likelihood, the workload of the judges will tend to increase and to gain in significance. It is therefore necessary that the General Assembly and the general public be kept well informed of the Court's activities, and that appropriate resources be allocated for it to meet the rising demand for its services.

The section on publications and documents in this year's report admits that there have been delays caused by the present budgetary restrictions in the publishing of the Court's fascicles and Yearbook, a trend which could give rise to concern if it were to persist. But more serious seem to be the warnings to the effect that the Court has been falling behind schedule in discharging its substantive responsibilities. Remedies must be found to prevent such undue delays from giving rise to scepticism or disillusionment regarding the Court's international role, a development which would not be in conformity with the rising expectations of the international community for an order founded on the rule of law, as well as on transparency and accountability.

We are grateful to the delegation of Mexico for having proposed that the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization examine practical ways and means to strengthen the Court and to enhance its

capacity to contribute to the peaceful settlement of disputes and the maintenance of international peace. As was clarified by the representative of Mexico, such an undertaking could be carried out without the need to amend the Charter or the Statute, and without purporting to undermine the authority or independence of the Court.

We agree that some thought can usefully be given to improving the Court's capacity to deal with a larger number of cases in a more expeditious and efficient manner, and we would concur with the suggestion that the Court itself, as well as Member States, submit their written comments on the matter.

I should like briefly to digress, to make a comment that I believe is relevant in this context.

A draft resolution was circulated on 22 October which raises important legal questions going beyond the immediate aims of its proponents. The draft, contained in document A/52/L.7, suggests that there is a

> "need to comply faithfully with the provisions of Article 108 of the Charter of the United Nations with respect to any resolution with Charter amendment implications".

The word "implications" is dangerously vague, possibly intentionally. The Charter does not provide for the adoption of draft resolutions according to Article 108, which applies specifically to amendments. Is it admissible that the majorities mentioned in Article 108 become applicable to draft resolutions which are not actual Charter amendments through the adoption of a draft resolution itself? And, assuming it is, would not that draft resolution itself be subject, by the same logic, to Article 108 provisions in turn, since it would stretch too far the meaning of a Charter provision?

It should be recalled that Article 108 also refers to ratification, and requires that the five permanent members of the Security Council approve the amendments before they come into force. Is it thus being suggested that resolutions which may or may not in the future be translated into Charter amendments would be subject to ratification, and thus to the veto? Is it acceptable to introduce the veto power into the General Assembly? A resolution, may I recall, is not an amendment; it is the sense of the General Assembly, even if, at a future stage, it may be the basis of an amendment, which then, but only then, would be subject, of course, to the provisions of Article 108.

Without going into the political merit of the requirement for a large majority when important draft resolutions are voted on, a requirement with which we agree, we must consider carefully the serious precedents these drafts, if adopted, would establish.

This is the kind of question that would probably benefit from the Court's legal advice, provided it can act expeditiously.

Mr. Mabilangan (Philippines): I would like to start by expressing my gratitude for the comprehensive and enlightening report of Mr. Stephen Schwebel, President of the International Court of Justice.

My country, one of 60 of the 185 parties to the Statute of the Court that recognize as compulsory the jurisdiction of the Court, continues to give work of the Court the highest regard and importance. We feel that the Court is significant not only as a distinguished and viable venue for the settlement of disputes, but also as a major factor in maintaining faith in the law in our fragmented global legal system.

States by and large prefer that the Court avoid creating law. States would still like to reserve that exercise for themselves. But the Court's pronouncements are a primary source for international lawyers, scholars and policy makers. Practically every paragraph of a decision or advisory opinion is scrutinized, probed, examined and quoted. Most cases and advisory opinions lead to publicists' filling journals and books with hundreds of pages of analysis and comments. In that sense, the Court plays a significant role in saying what the law is for a great many people.

States make treaties. States make the practice and manifest the *opinio juris* that build customary law. States, in so doing, look to the work of the Court. The body of work created by the Court is probably the most influential factor when a State acts in the context of making or applying international law.

It is a truism in most legal systems that hard cases make bad law. In the international arena, so far, hard cases make no law. With far too few exceptions, the truly significant disputes and conflicts in the world are still to see the light of day in the Court or in any other judicial or third-party forum. This is still true today, even though a State that finds itself tempted by self-interest to erode traditional and established norms may in time regret its conduct.

Some have pointed to the non-compulsory jurisdiction of the Court as its major weakness. In some instances, those involved in a dispute lament that the Court does not have universal and compulsory jurisdiction. This is an attitude that oversimplifies the nature and content of international disputes. The non-compulsory jurisdiction of the Court for them becomes an excuse for inaction.

My region is experiencing an era of peace and stability that has provided a firm basis for its sustained progress and growth. Yet we are not without problems. In the seas central to our region, we have disputes over territory and boundaries. The Philippines has consistently taken a position of resolving these disputes peacefully, including bringing them to the Court. We continue to maintain this position.

We have been moving forward in addressing these disputes, though the steps we have taken are small, few and cautious. We are confident that we will find a just, peaceful and lasting solution to this situation, and we study very closely each and every legal pronouncement and formulation the Court makes in cases before it that concern territorial and maritime disputes.

From the report of the Court, we note that the Court's docket today is the fullest it has ever been. There was a time when it was not so full. There was a time when the Court had so few cases that the rumoured practice of the Chief Clerk of the Permanent Court of International Justice would come to mind. In the 1920s and 1930s the Chief Clerk of that Court was said to have made his way about the capitals of Europe as a kind of *agent provocateur*, talking up border disputes that the Court could adjudicate.

But I anticipate that even more cases will be brought to the Court. The end of the cold war meant a reduction in the role that power played in determining the outcome of State behaviour in its many aspects. Today states have the law as a primary guide for their behaviour. Also the stigma of resorting to third parties is declining.

Our interdependent world is turning into a very complex one. While the reports of the death of the State are exaggerated, today States are disaggregating into separate, functionally distinct parts. Non-State and sub-State actors that bring with them vastly complex and wide varieties of issues are forcing us to reassess the rules that govern us. These factors, unimaginable only a decade ago, are causing States to be as creative in resolving their disputes as the situation demands.

The changed global circumstances has also made possible one of the most significant requests for an advisory opinion ever made of the Court. While a definitive ruling on the specific issue before it would have been desirable, the assumption by the Court of its jurisdiction on a highly political issue and its subsequent Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* is a welcome development. The Court must, therefore, have the resources by which to play its increasing role in resolving disputes and in the progress of international law.

In spite of the logistical difficulties facing the Court, it has not failed to keep up with technology and the challenges of cyberspace. The Court has an impressive website, dignified and full of useful information, yet user-friendly. While the website contains many useful documents, I hope that the day will come when the Court's wisdom and erudition will truly be available to anyone who can dial up a server and access the Internet. On my visit to the Court's website, I saw that the decisions and pleadings in two or three cases were accessible through its website.

It is my hope that one day all the decisions, advisory opinions, orders and pleadings of the Court will be available on the website. I know that this is a rather daunting task, considering the current limitations experienced by the Court. Neither do I wish to deprive of their business existing websites or services that offer these documents at prices only rich law firms or well-endowed institutions can afford. But there is much that the Court says about international law that could help guide States, not only in settling disputes, but also in preventing them, as well as in their general dealings with other subjects and objects of international law.

While on the subject of the Court's Internet presence, I could not help but notice something else about its website. The word "web" in Internet language is used on purpose, and is very descriptive of the nature and practice in the Internet of linkages and interusage. Yet, in what is a rather rare case for websites on the Internet, the Court's website has no links with other sites, not even with the United Nations Home Page.

As an avid user of the Internet, at first I found this strange. But after a few seconds of cybershock I realized the profound symbolism in this: that the Court is indeed an independent body. It is this independence, together with its probity and integrity, and a well-deserved infusion of resources, that will sustain the Court as it

continues to assume a central role in the pursuit of justice and the maintenance of world peace.

Mr. Kamaruddin Bin Ahmad (Malaysia): My delegation wishes to congratulate Judge Stephen M. Schwebel on his re-election, as well as his elevation to the presidency of the International Court of Justice, and to thank him for his report in document A/52/4. My delegation also wishes to congratulate both Judge Pieter H. Kooijmans and Judge Francesco Rezek on their election to the Court. Our felicitations also go to Judges M. Bedjaoui and S. Vereshchetin on their re-election.

My delegation notes that there has been increasing recourse to the Court by Member States over the years. It is also heartening to note that 60 States have made declarations recognizing as compulsory the jurisdiction of the Court, as stipulated in article 36, paragraphs 2 and 5, of the Statute. This positive development is to be welcomed, as it will contribute to the continued relevance and strengthening of the Court in the United Nations system.

The International Court of Justice, like other United Nations organs, has an important role to play in the promotion of peace and harmony between nations and peoples of the world through the rule of law. However, it is disquieting to note that nine contentious cases under the Court's review are still pending. Some of these cases, in my delegation's view, would have been expeditiously solved, especially when much substantive work has already been done, but for the objections of certain Member States by virtue of article 79, paragraph 3, of the Rules of Court. In our view, resorting to that article too frequently will only delay settlement of the cases, and will not be in the overall interest of Member States. We would, therefore, urge parties to disputes before the Court to cooperate as fully as possible with it to ensure an expeditious settlement of their disputes.

In the light of the increase in the number of cases referred to the International Court of Justice in the last several years, there is an urgent need to strengthen the Court's capacity to handle these cases. We note that the Court has been placed under a severe strain, with reductions in both its human and financial resources. Consequently, it has not been able satisfactorily to provide its judicial services to meet with the increasing demands made by Member States. My delegation, therefore, strongly supports the call for the Court to be given adequate human and financial resources to enable it to fulfil its functions and responsibilities as an important organ within the United Nations system. My delegation further hopes that, with the establishment and commissioning of the International Tribunal for the Law of the Sea, States will consider referring their maritime disputes to the Tribunal, thereby lessening the Court's burden.

As the only judicial organ of the United Nations, the Court, my delegation also believes, should be a source of advisory opinions for other organs of the United Nations. The intergovernmental organs of the United Nations should not only utilize the Court as a source that can interpret the relevant and applicable laws, but should also refer controversial issues to the Court for advisory opinions. In this regard, Malaysia is particularly pleased with the Advisory Opinion rendered by the Court last year on the *Legality of the Threat or Use of Nuclear Weapons*, which, in the view of my delegation, was an important development in the issue of nuclear disarmament.

It is clear to my delegation that the Court's judgments and opinions have all contributed to the progressive development of international law, and this is consistent with the thrust and aims of the United Nations Decade of International Law programme. Even if, on occasions, a request to file a case has been dismissed by the Court on certain legal or technical grounds, the filing of these cases has, nevertheless, had a salutary impact on account of the publicity generated.

My delegation commends the efforts made by the Court to increase public awareness and understanding of its work, such as through the various talks and lectures given by the President and other members of the Court, as well as by the Registrar and other officials of the Court. While disseminating information about the Court through traditional methods is to be welcomed and further encouraged, my delegation believes that the use of advanced technology in enhancing public awareness about the Court and its activities should be improved. To this end, we express strong support for the steps taken by the Court to take advantage of the benefits provided by the electronic media, such as the Internet, and in particular the construction of its own website, which should facilitate public access to the Court's voluminous documents.

In conclusion, it is the view of my delegation that, like the other organs and institutions within the United Nations system, the International Court of Justice should directly benefit from the ongoing reform process undertaken by the United Nations. A revitalized

International Court of Justice should certainly contribute to its effectiveness and efficiency in handling the many cases before it, thereby enhancing the role of the Court in the promotion of justice under international law.

Mr. Rebagliati (Argentina) (*interpretation from Spanish*): First, I should like to welcome Judge Stephen M. Schwebel to this Hall, and say how pleased Argentina is at his election to the Presidency of the International Court of Justice (ICJ). We would also like to express our appreciation to Judge Mohammed Bedjaoui for the brilliant leadership he demonstrated during his Presidency.

Argentina attaches particular importance to this type of dialogue which takes place annually between the General Assembly and the International Court of Justice to examine the progress of the Court's work. This periodic contact not only demonstrates the General Assembly's interest in the Court's activities, it is also exemplary of the close cooperation that must exist between the principal organs of the United Nations for the attainment of their objectives.

The ICJ, in its capacity as the international community's principal judicial organ, has fundamental responsibilities for the peaceful settlement of disputes through the application of the rule of law. In fulfilling this specific function, the Court occupies a privileged place in the overall system for the maintenance of international peace and security.

Without being unduly optimistic, we must emphasize the growing importance of the Court and the law in today's world. Though international society remains consensus-driven, it is clear that international relations are increasingly permeated by the law. The rule of law is of particular importance in weaving the international fabric of a globalized society in which unity and interdependence coexist with a trend towards fragmentation and the worsening of local conflicts.

The progress in international law is manifested in the growing will of States to submit their disputes to jurisdictional dispute settlement mechanisms, and to accept adjudication by third parties in order to make State responsibility effective. At the same time, States are moving towards establishing the individual penal responsibility of those who commit extremely grave international crimes, through the creation of special courts and the forthcoming establishment of an international criminal court.

All of this reveals the aspiration of States to strengthen the law and punish violations. More generally, it reflects the international community's progressive recognition that justice is an essential component of a stable peace.

In this context, the number and complexity of the cases brought before the International Court of Justice attests, in particular, to the willingness of States to submit and entrust to the Court the most varied aspects of international relations.

In the period covered by the report, the Court has handled cases involving central aspects of international peace and security, such as questions arising from the aerial incident at Lockerbie, oil platforms, or the implementation of the international Convention on the Prevention and Punishment of the Crime of Genocide.

The fact that the Court is dealing with matters that are undoubtedly among the most complex and topical of international law reveals the growing international trust in its authority, integrity, impartiality and independence. Its vitality and prestige have been reflected not only in the nature of the cases brought before it, but also in the increase in the number of States from all regions that have turned to the Court for the settlement of disputes. At the same time, the will of States to develop international law and broaden its content is apparent. This, in turn, should benefit the functions of the Court by strengthening the legal basis for their exercise.

The States must see to it that the International Court of Justice will be able to cope with the expected expansion of its activities. The Court is endowed by its Statute and rules with the procedural tools it needs in order effectively to carry out its functions, both with respect to dispute settlement and in the framework of its equally important advisory authority.

We must ensure that the Court is also provided with adequate resources to make the best use of those tools, which were designed by the founding fathers and the members of the Court themselves. At a time when our Organization is confronting severe budgetary restraints and is debating the process of reform, we most not allow circumstantial problems to undermine the ICJ's immense potential in the maintenance of international peace and security.

Mr. Berrocal Soto (Costa Rica) (*interpretation from Spanish*): My delegation is pleased to be able to take the floor in this debate on the report of the International Court of Justice (document A/52/4). We are particularly honoured by the presence of the distinguished President of the Court, Judge Schwebel, whose erudition is well known and widely admired.

Costa Rica has renounced the force of arms and accepted the force of law. International law is the sole, reliable guarantee of our independence and sovereignty. Our faith in the principles of the Charter has enabled us to throw off the financial and budgetary burden of maintaining an army and has enabled us to build a more humane and just society, based on universal respect for human rights.

This year my country is celebrating the forty-ninth anniversary of the constitutional abolition of its armed forces. In this connection, respect and support for the rule of law are the fundamental pillars of our foreign policy and our position here in the United Nations. The promotion of human rights, respect for international humanitarian law, the implementation of the principle of non-intervention, total adherence to the prohibition of the use of force and the fostering of democracy as the ideal way to realize the right of peoples to self-determination — these are all recurring themes in our international actions, both here in the General Assembly and in the Security Council. Only respect for those principles, which are central to international law, can enable us to build an international society that is more humane, just and harmonious, more peaceful and more civilized.

In this, the International Court of Justice plays a central role. Any legal system requires effective machinery for the peaceful settlement of disputes. If that machinery did not exist, disputes would interfere with the normal processes of international relations and could become threats to peace. States therefore have an unequivocal obligation to settle disputes peacefully and without recourse to armed force. In this connection, the International Court of Justice is eminently well equipped. When States are unable to settle their disputes through negotiations, they can have recourse to the Court in exercise of their sovereign right to choose the means to settle disputes. Only the Court possesses the appropriate intellectual and material resources to analyse thoroughly the various de facto and *de jure* arguments submitted by the parties to the dispute, and only the Court can then hand down a solution to satisfy the parties' desire for justice within the context of the United Nations Charter.

Furthermore — and this is one of its essential functions — the International Court of Justice plays a central role in the progressive development of international law. In particular, Costa Rica believes that the Court's Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* is one of the milestones in the development of international law, recognizing as it does the obligation on all States to enter into negotiations in good faith on complete nuclear disarmament under effective international control. My country is fully committed to compliance with that commitment and is prepared to participate in such fundamental and necessary negotiations at any time.

In the light of what I have said, and given the extremely important role of the International Court of Justice, it is regrettable that so far only one third of the States of the international community — some 60 States only — have recognized the compulsory jurisdiction of the Court. It is also regrettable that, in addition, many of them have limited their recognition by expressing reservations, thereby unnecessarily restricting the work that the Court can accomplish. Costa Rica therefore invites all States that have not yet done so to recognize the Court's compulsory jurisdiction. Costa Rica believes, in particular, that recognition of that jurisdiction should be a requirement for all States whose nationals are nominated as candidates to such a lofty tribunal, for permanent members of the Security Council and for those that wish to become permanent members under the reforms currently being discussed at this fifty-second session of the General Assembly. We call upon the 120 countries that have not yet recognized the compulsory jurisdiction of the Court to do so, in accordance with the provisions of paragraphs 2 and 5 of article 36 of the Court's Statute.

The International Court of Justice is flourishing. The number of cases before it, as reflected in the report (A/52/4) now before the Assembly, is unusually high, and it is especially being used by developing countries. In addition, as we have said, the recent Advisory Opinions on the legality of the use of nuclear weapons involved the participation of an unprecedented number of States. This attests to the growing interest and confidence in the Court, which we believe is a very healthy and positive trend.

However, we cannot fail to mention that proceedings before the Court continue to present unnecessary difficulties for developing States. Litigation, if not the Court's Statute and rules, requires lengthy pleadings and

extensive documentation, dozens of lawyers and long years before the Court can reach a final decision on a case. This entails prohibitive costs for most States, and is one of the reasons for the Court's present financial crisis. The Court should refrain from encouraging such practices. On the contrary, it should discourage the unnecessary submission and presentation of evidence and documentation, which must be translated by the Court. Furthermore, judges should set limits on the length and extent of their separate and dissenting opinions, realizing that the quality of the Court's opinions is not dependent on their copiousness or their scope. If those practical and concrete steps could be taken, at the Court's discretion and respecting the sovereign right of parties to present their cases, and the independence of the judges, the Court could resolve its present financial crisis and become more efficient in dealing with the cases submitted for its consideration.

We cannot, of course, deny that the financial crisis of the United Nations itself has imposed serious restraints on the work of the Court. We must strengthen the Court's budget so that it can rebuild the necessary administrative and investigative services it requires to carry out its work effectively. My delegation recognizes the efforts the Court has made recently to increase the dissemination of information. We welcome in particular the idea of having documents and judgments made available to the public on the Internet. We believe that will not only reduce costs in the future but will also promote knowledge of and research into the work of the Court, particularly in developing countries that do not normally have access to the Court's documentation but can now access it on the Internet. That is indeed important progress that should be noted.

The International Court of Justice and other international bodies concerned with the administration of justice — such as the International Tribunal for the Law of the Sea and the international criminal court whose establishment is now being negotiated — embody the joint effort the international community is making to ensure the rule of law in the conduct of international relations. In this connection, these bodies are an essential part of the international community.

My country wishes once again to reiterate its full support for and confidence in the outstanding work the Court has done, as reflected in its important decisions.

The Acting President: We have heard the last speaker in the debate on agenda item 13, "Report of the International Court of Justice". May I take it that it is the wish of the Assembly to conclude its consideration of agenda item 13?

It was so decided.

Programme of work

The President: I should like to inform members that agenda item 27, entitled "Return or restitution of cultural property to the countries of origin", originally scheduled for tomorrow morning, Tuesday, 28 October, will be taken up at a later date to be announced.

Agenda item 14, entitled "Report of the International Atomic Energy Agency", originally scheduled for Monday morning, 3 November, will now be taken up on Wednesday, 12 November, in the morning.

I should now like to make an announcement concerning agenda item 20, entitled "Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance", which is scheduled for consideration by the General Assembly on Monday, 24 November in the morning.

I have requested His Excellency Mr. Ernst Sucharipa, Permanent Representative of Austria to the United Nations, who during the three previous sessions so ably coordinated the informal consultations on draft resolutions under the same agenda item, to assist once again in the same capacity at this session, and Ambassador Sucharipa has graciously accepted.

May I request those delegations intending to submit draft resolutions under agenda item 20 to do so as early as possible in order to allow time, if need be, for negotiations with a view to reaching consensus on the draft resolutions.

The meeting rose at 11.35 p.m.